

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN SCOTT DEPETRO,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting  
Commissioner of Social Security  
Administration,

Defendant.

NO: 12-CV-0546-TOR

ORDER GRANTING DEFENDANT'S  
MOTION FOR SUMMARY  
JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 14, 15). Plaintiff is represented by Maureen J. Rosette. Defendant is represented by Lisa Goldoftas. The Court has reviewed the administrative record and the parties' completed briefing and is fully informed. For the reasons discussed below, the Court grants Defendant's motion and denies Plaintiff's motion.

///

1 JURISDICTION

2 The Court has jurisdiction over this case pursuant to 42 U.S.C. §§ 405(g);  
3 1383(c)(3).

4 STANDARD OF REVIEW

5 A district court's review of a final decision of the Commissioner of Social  
6 Security is governed by 42 U.S.C. § 405(g). The scope of review under §405(g) is  
7 limited: the Commissioner's decision will be disturbed "only if it is not supported  
8 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,  
9 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means  
10 relevant evidence that "a reasonable mind might accept as adequate to support a  
11 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,  
12 substantial evidence equates to "more than a mere scintilla[,] but less than a  
13 preponderance." *Id.* (quotation and citation omitted). In determining whether this  
14 standard has been satisfied, a reviewing court must consider the entire record as a  
15 whole rather than searching for supporting evidence in isolation. *Id.*

16 In reviewing a denial of benefits, a district court may not substitute its  
17 judgment for that of the Commissioner. If the evidence in the record "is  
18 susceptible to more than one rational interpretation, [the court] must uphold the  
19 ALJ's findings if they are supported by inferences reasonably drawn from the  
20 record." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012). Further, a district

1 court “may not reverse an ALJ’s decision on account of an error that is harmless.”  
2 *Id.* at 1111. An error is harmless “where it is inconsequential to the [ALJ’s]  
3 ultimate nondisability determination.” *Id.* at 1115 (quotation and citation omitted).  
4 The party appealing the ALJ’s decision generally bears the burden of establishing  
5 that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396, 409-10 (2009).

#### 6 FIVE-STEP SEQUENTIAL EVALUATION PROCESS

7 A claimant must satisfy two conditions to be considered “disabled” within  
8 the meaning of the Social Security Act. First, the claimant must be “unable to  
9 engage in any substantial gainful activity by reason of any medically determinable  
10 physical or mental impairment which can be expected to result in death or which  
11 has lasted or can be expected to last for a continuous period of not less than twelve  
12 months.” 42 U.S.C. § 1382c(a)(3)(A). Second, the claimant’s impairment must be  
13 “of such severity that he is not only unable to do his previous work[,] but cannot,  
14 considering his age, education, and work experience, engage in any other kind of  
15 substantial gainful work which exists in the national economy.” 42 U.S.C.  
16 § 1382c(a)(3)(B).

17 The Commissioner has established a five-step sequential analysis to  
18 determine whether a claimant satisfies the above criteria. *See* 20 C.F.R.  
19 § 416.920(a)(4)(i)-(v). At step one, the Commissioner considers the claimant’s  
20 work activity. 20 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in

1 “substantial gainful activity,” the Commissioner must find that the claimant is not  
2 disabled. 20 C.F.R. § 416.920(b).

3 If the claimant is not engaged in substantial gainful activities, the analysis  
4 proceeds to step two. At this step, the Commissioner considers the severity of the  
5 claimant’s impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from  
6 “any impairment or combination of impairments which significantly limits [his or  
7 her] physical or mental ability to do basic work activities,” the analysis proceeds to  
8 step three. 20 C.F.R. § 416.920(c). If the claimant’s impairment does not satisfy  
9 this severity threshold, however, the Commissioner must find that the claimant is  
10 not disabled. *Id.*

11 At step three, the Commissioner compares the claimant’s impairment to  
12 several impairments recognized by the Commissioner to be so severe as to  
13 preclude a person from engaging in substantial gainful activity. 20 C.F.R.  
14 § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the  
15 enumerated impairments, the Commissioner must find the claimant disabled and  
16 award benefits. 20 C.F.R. § 416.920(d).

17 If the severity of the claimant’s impairment does meet or exceed the severity  
18 of the enumerated impairments, the Commissioner must pause to assess the  
19 claimant’s “residual functional capacity.” Residual functional capacity (“RFC”),  
20 defined generally as the claimant’s ability to perform physical and mental work

1 activities on a sustained basis despite his or her limitations (20 C.F.R.  
2 § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

3 At step four, the Commissioner considers whether, in view of the claimant's  
4 RFC, the claimant is capable of performing work that he or she has performed in  
5 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is  
6 capable of performing past relevant work, the Commissioner must find that the  
7 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of  
8 performing such work, the analysis proceeds to step five.

9 At step five, the Commissioner considers whether, in view of the claimant's  
10 RFC, the claimant is capable of performing other work in the national economy.  
11 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner  
12 must also consider vocational factors such as the claimant's age, education and  
13 work experience. *Id.* If the claimant is capable of adjusting to other work, the  
14 Commissioner must find that the claimant is not disabled. 20 C.F.R.  
15 § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the  
16 analysis concludes with a finding that the claimant is disabled and is therefore  
17 entitled to benefits. *Id.*

18 The claimant bears the burden of proof at steps one through four above.  
19 *Lockwood v. Comm'r of Soc. Sec. Admin.*, 616 F.3d 1068, 1071 (9th Cir. 2010). If  
20 the analysis proceeds to step five, the burden shifts to the Commissioner to

1 establish that (1) the claimant is capable of performing other work; and (2) such  
2 work “exists in significant numbers in the national economy.” 20 C.F.R.  
3 § 416.960(c)(2); *Beltran v. Astrue*, 700 F.3d 386, 389 (9th Cir. 2012).

#### 4 ALJ’S FINDINGS

5 Plaintiff applied for supplemental security income (SSI) payments on March  
6 16, 2009, alleging an onset date of January 1, 1997. Tr. 131-133. Plaintiff’s claim  
7 was denied initially and on reconsideration. Tr. 73-76, 88-97. Plaintiff filed a  
8 timely request for a hearing (Tr. 98-99) and appeared with an attorney at a hearing  
9 before an administrative law judge (“ALJ”) on August 6, 2010. Tr. 42-65.<sup>1</sup>

10  
11 <sup>1</sup> The Court notes that the ALJ’s decision issued on September 2, 2010 does not  
12 reflect claimant’s amended onset date of March 16, 2009 for the SSI claim only, as  
13 Plaintiff’s attorney conceded at the hearing. Tr. 45-46. Plaintiff does not directly  
14 address the Title II claim that was also filed in this proceeding with an alleged  
15 onset date of January 1, 1997. Nor did the hearing or medical records relate to that  
16 period of time for which applications have previously been denied. While res  
17 judicata does not apply when an ALJ later considers “on the merits” whether the  
18 claimant was disabled during an already-adjudicated period, *Lester v. Chater*, 81  
19 F.3d 821, 827 n.3 (9th Cir. 1995), Plaintiff only argued for SSI benefits after  
20 March 16, 2009. Tr. 45-46. Plaintiff met the insured status, for Title II, only

1 The ALJ issued a decision on September 2, 2010, finding that Plaintiff was  
2 not disabled under the Act. Tr. 24-33. At step one, the ALJ found that Plaintiff  
3 had not engaged in substantial gainful activity since January 1, 1997. *Id.* At step  
4 two, the ALJ found that Plaintiff had severe impairments, but, at step three, the  
5 ALJ found that Plaintiff's impairments did not meet or medically equal a listed  
6 impairment. Tr. 26-28. The ALJ determined Plaintiff had the residual functional  
7 capacity to:

8 lift and/or carry up to 20 pounds occasionally and 10 pounds  
9 frequently, stand and/or walk up to four hours in an eight hour  
10 workday, and sit up to six hours in an eight hour workday. The  
11 claimant can perform simple, routine, independent work with objects  
12 and with no intense interaction with other people. In addition, there  
13 could be no alcohol in the work environment, the claimant could not  
14 perform prolonged reading, the claimant could not perform security  
15 work or work involving the safety of others, and the claimant would  
16 have difficulty with frequent criticism from supervisors. Lastly, the  
17 claimant would have moderate mental limitations but which would  
18 not preclude basic work activity in the following areas: the ability to  
19 sustain an ordinary routine without special supervision, the ability to  
20 interact appropriately with the general public, and the ability to accept  
instructions and respond appropriately to criticism from supervisors.

Tr. 28-29. At step four, the ALJ found that Plaintiff was able to perform his past  
relevant work as a kitchen helper. Tr. 31. At step five, the ALJ made alternative  
findings that there were a significant number of jobs existing in the national

---

through June 20, 1999. Tr. 26. Thus, the Court confines its review to the SSI  
application only and ignores the expired Title II claim.

1 economy which Plaintiff could perform in view of his residual functional capacity  
2 and denied his claim on that basis, as well. Tr. 31-32.

3 On August 10, 2012, the Appeals Council denied Plaintiff's request for  
4 review (Tr. 1-7), making the ALJ's decision the Commissioner's final decision that  
5 is subject to judicial review. 42 U.S.C. §§ 405(g), 1383(c)(3); 20 C.F.R.  
6 §§ 416.1481, 422.210.

### 7 ISSUE

8 Plaintiff contends the ALJ improperly rejected the opinion of Debra D.  
9 Brown, Ph.D., and unfairly credited the opinion of Dr. Edward Beaty. ECF No. 14  
10 at 10-13.

### 11 DISCUSSION

12 Plaintiff argues that "he is more limited from a psychological standpoint  
13 than what was determined by the ALJ." *Id.* He cites to a psychological evaluation  
14 completed by Dr. Brown on September 24, 2009.<sup>2</sup> Tr. 305-313. Dr. Brown  
15 diagnosed Plaintiff with: post-traumatic stress disorder; recurrent major  
16 depression---severe without psychosis; bipolar II disorder; antisocial personality  
17 disorder; and borderline intellectual functioning. Tr. 309. Plaintiff also cites to Dr.

---

18  
19 <sup>2</sup> Later in his brief, Plaintiff erroneously refers to this same evaluation as "another  
20 evaluation" on October 13, 2009. ECF No. 14 at 10.



1 Brown's evaluations done in 1999, 2004, 2005, 2007, and 2008. Additionally,  
2 Plaintiff cites to an evaluation performed by Dr. Islam-Zwart in 2007. Plaintiff  
3 places much emphasis on Dr. Brown's 2008 conclusions: "Dr. Brown stated that  
4 Mr. Depetro was not employable. She also stated that Mr. Depetro's conditions  
5 were chronic and she recommended SSI for Mr. Depetro (TR 216)." ECF No. 14  
6 at 10.

7 A treating physician's opinions are entitled to substantial weight in social  
8 security proceedings. *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228  
9 (9th Cir. 2009). If a treating or examining physician's opinion is uncontradicted,  
10 an ALJ may reject it only by offering "clear and convincing reasons that are  
11 supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th  
12 Cir. 2005). "However, the ALJ need not accept the opinion of any physician,  
13 including a treating physician, if that opinion is brief, conclusory and inadequately  
14 supported by clinical findings." *Bray*, 554 F.3d at 1228 (quotation and citation  
15 omitted). "If a treating or examining doctor's opinion is contradicted by another  
16 doctor's opinion, an ALJ may only reject it by providing specific and legitimate  
17 reasons that are supported by substantial evidence." *Bayliss v. Barnhart*, 427 F.3d  
18 at 1216 (*citing Lester v. Chater*, 81 F.3d 821, 830-831 (9th Cir. 1995)).

19 The record does contain psychological evaluations dated 2004 through 2008,  
20 but the Plaintiff's attorney conceded at the hearing that the only period at issue was

1 from March 16, 2009 forward. While these evaluations provide background  
2 information, the ALJ specifically found:

3 The undersigned also notes that the medical evidence of record  
4 since the prior Administrative Law Judge decision in January 2009  
5 is not consistent with any greater physical or mental limits. The  
6 medical evidence of record does not establish any new limitations  
7 that were not previously considered.

8 \* \* \*

9 .... there is no new medical evidence establishing greater  
10 limitations than those outlined by the prior ALJ decision.

11 Tr. 30. Plaintiff claims "Dr. Brown had been seeing [Plaintiff] for over 10 years."  
12 ECF No. 14 at 11. While this statement may be superficially accurate, the record  
13 does not establish that Dr. Brown was continuously seeing or treating Plaintiff  
14 during this period of time. Indeed, the record supports the ALJ's findings that:

15 Psychologist Debra D. Brown, Ph.D. treated and evaluated the  
16 claimant periodically during the alleged period of disability. She  
17 also provided psychological evaluation forms to the State  
18 Department of Social and Health Services in October 2009,  
19 pursuant to the claimant's receipt of public assistance payments.  
20 Dr. Brown opined that the claimant had mild to moderate cognitive  
limitations in areas such as exercising judgment and making  
decisions, learning new tasks, and understanding, remembering,  
and following complex instructions. She also noted that in the area  
of social functioning, the claimant had marked limitations in  
responding appropriately and tolerating pressures in the workplace,  
and maintaining appropriate behavior, as well as moderate  
limitations in relating to co-workers, supervisors, and the generally  
public (Ex. 9F [Tr. 305-13]). Dr. Brown's assessment of cognitive  
limitations is consistent with treatment records, and the claimant's  
performance on mental status examination, which was generally  
within normal limitations. However, while the claimant does have

1 some social limitations associated with his symptoms of antisocial  
2 personality disorder, there are no findings to support the marked  
3 limitations outlined by Dr. Brown. Accordingly, limited weight has  
4 been given to Dr. Brown's functional assessment of the claimant's  
cognitive and social limitations, insofar as it demonstrates that the  
claimant has some moderate social and cognitive limitations, but  
he is not entirely precluded from sustaining basic work activities.

5 Tr. 30.

6 Significantly, Plaintiff has not challenged the ALJ's credibility finding with  
7 respect to Plaintiff's testimony. The ALJ found the evidence showed Plaintiff had  
8 only mild restriction with regard to activities of daily living. Tr. 27. For instance,  
9 he rented a room, managed his money, did housework and laundry, prepared  
10 meals, shopped, used public transportation, and watched television. Tr. 27. No  
11 treating physician recommended any physical restrictions. Tr. 31. The ALJ also  
12 noted that the claimant has not generally received the type of medical treatment  
13 one would expect for a totally disabled individual. Tr. 30.

14 The ALJ recounted in detail the objective medical evidence established by  
15 the various treating, examining and consulting physicians and then reasonably  
16 concluded "[w]hile the claimant does have some physical and mental limitations,  
17 the objective medical record does not support limitations to the extent he alleged."

18 Tr. 31.

19 ///

20 ///

1 It is not for this Court to reweigh the medical evidence but rather to consider  
2 the entire record as a whole. *Hill*, 698 F.3d at 1159. The Court has reviewed the  
3 record and agrees that substantial evidence supports the ALJ's conclusion.

4 Accordingly, the Court grants summary judgment in Defendant's favor.

5 **ACCORDINGLY, IT IS HEREBY ORDERED:**

6 1. Plaintiff's Motion for Summary Judgment (ECF No. 14) is **DENIED**.

7 2. Defendant's Motion for Summary Judgment (ECF No. 15) is

8 **GRANTED.**

9 The District Court Executive is hereby directed to file this Order, enter  
10 Judgment for Defendant, provide copies to counsel, and **CLOSE** this file.

11 **DATED** July 30, 2013.



15  
16  
17  
18  
19  
20

A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE  
United States District Judge